Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

21-May-2012

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2012)12
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2011 --

This report is submitted by Lithuania to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 13-14 June 2012.

JT03321970

English - Or. English

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Executive Summary

1. 2011 was a challenging year for the Competition Council of the Republic of Lithuania (CC) in terms of legislative work, competition enforcement, and strengthening the administrative capacities.

2. In the course of the year the Law on Competition of 1999 (LC) was amended and supplemented on two occasions. With a view to introducing additional measures that should ensure a more efficient competition and a more effective protection of competition by fighting against the infringements of the LC and making it more difficult for undertakings and their managers to avoid liability, the amendments to the LC were introduced in April and November, 2011. Furthermore, in September 2011, a draft new version of the LC was submitted to the Parliament.

3. When conducting investigations concerning the compliance with the requirements of the LC and the TFEU and analysing the concentration notifications, efforts were made to focus on investigations of the most significant infringements. In enforcing the LC the CC established totally 13 infringements and imposed fines on 64 undertakings in the amount of LTL 17.1 million (EUR 4.9 million). Considerable attention was devoted to the prosecution of anti-competitive agreements. During the reporting year the CC increased its staff in charge of the area, therefore its performance results were improved as compared to previous years. In 2011 final decisions were taken in twelve cases. Several cartels were established involving an especially big number of participants and covering a significant share of the examined market. In comparison to 2010, there was also a considerable increase in the number of issued authorizations to implement concentration or its individual actions.

4. With a view to achieving better organisation of work and implementing the tasks defined in the Strategic Activity Plan the CC had been further improving its administrative structure. Quite a considerable number of young specialists having completed the studies of competition law and economics both in Lithuanian and foreign higher education institutions were hired as civil servants.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

5. The amendments of April 2011 to the LC that became effective on 3 May 2011, have made it possible to hold heads of undertakings personally liable for their involvement in a cartel or an abuse of dominance infringement. The head of an undertaking will be considered as being involved in the infringement when: 1) he directly contributed to the breach of competition law, 2) his conduct did not contribute to the breach of competition law but he had reasonable grounds to suspect that the undertaking's conduct constituted the breach and took no steps to prevent it, or 3) the head did not know but ought to have known that the undertaking's conduct constituted the breach. Persons found to be involved in the infringement may lose their right to hold office as company heads or members of collegial supervisory and/or management bodies for a period from three to five years. In addition, a fine of up to LTL 50 000 (EUR 14 481) may be imposed. Another important statutory amendment has extended the limitation period for imposing fines for competition law infringements from three to five years. Besides, the amended law lists circumstances under which the limitation period shall be suspended. The amendments also provide that the fines for infringements of the LC shall be differentiated according to the value of sales of the undertaking's goods directly or indirectly associated with the infringement. This allows the CC to impose more individualised fines.

6. On 20 September 2011, a draft new version of the LC submitted by the President was registered in the Parliament (adopted on 22 March 2012 and became effective on 1 May 2012). Numerous technical amendments aside, the most important proposal was to allow the CC to prioritise its antitrust enforcement,

thus focusing on the most important investigations in terms of real outcome for consumers. The Government later also proposed to include in the Draft an amendment that would ease the burden on undertakings related to the monitoring of implementation of concentrations: i.e. to increase the limits of the total turnover from LTL 30 to 50 million in excess of which the undertakings intending to implement concentration must obtain an authorisation of the CC. For this purpose, it was also proposed to increase the limit of the presumed control specified in the LC that is of importance in the course of assessing concentrations. Besides, with a view to encouraging the undertakings to admit having committed the most serious infringements of the LC and to increasing the disclosure of such infringements, it was proposed in the Draft to also exempt from fines the undertakings that have participated in the agreements on prices concluded between non-competitive undertakings, provided that they first address the CC by admitting to the infringement and submit the relevant information and evidence concerning the infringements committed together with these other undertakings.

1.2 Other relevant measures, including new guidelines

7. In implementing the amendments to the LC that became effective on 3 May 2011, a new procedure for determining the amount of fines imposed for infringements of the LC was drafted and approved by the Government Resolution No. 64 of 18 January 2012. The new procedure is a close copy of the European Commission's 2006 fining guidelines. It allows the CC to set individualised fines by taking into account a percentage of the value of sales to which the infringement relates. Additionally, the new rules enable the CC to significantly increase fines for recidivism thus ensuring stronger deterrence.

1.3 Government proposals for new legislation

8. In February 2011, the CC submitted comments to the Ministry of Culture on the Draft Order of the Minister establishing the procedure for inspection of the print circulation of newspapers and magazines. The CC noted that the Draft insubstantially specified that the procedure would apply only to legal entities registered in Lithuania. This would mean that the procedure would not apply to legal entities established in other countries but operating in Lithuania via a permanent office (a branch office) or a subsidiary, placing the latter in a less regulated and more favourable legal environment than the Lithuanian legal entities providing the same services. Having taken into consideration this comment, the Ministry of Culture supplemented the Draft with a provision specifying that the Draft shall create obligations for all the legal entities registered in Lithuania and also for legal entities established in other countries but operating in Lithuania via a permanent office (a branch office) or a subsidiary.

9. In April 2011, the CC submitted a proposal to the Ministry of Energy and the Ministry of Economy on the improvement of competitive conditions in the fuel market the sellers of fuel to offer fuel at prices more favourable for consumers. The CC submitted the proposal having taken into consideration the Analysis of Fuel Prices carried out by the CC which aimed at identifying the factors that could have caused different fuel prices in Lithuania in comparison with its neighbouring countries Estonia, Latvia and Poland. In the opinion of the CC, the creation of better conditions for the import of petroleum and an increased competitive pressure on the single company producing fuel in Lithuania AB *ORLEN Lithuania* could have the greatest effect on the decrease of fuel prices. The measure for increasing this competitive pressure could be the increase in the quantity of the minimum stocks that are allowed to be stored in foreign countries. The Government approved the position of the CC and submitted to the Parliament the amendments to the Lithuanian Law on State Stocks of Petroleum Products and Crude Oil allowing the storage of 100 per cent of the total State stocks in EU member states. The adoption of such amendments would give rise to an actual competition to AB *ORLEN Lithuania*, and this should result in a decrease in fuel prices.

10. In June 2011, the CC submitted comments on the amendments to the Law on Prices initiated by the members of the Parliament whereby it was intended to regulate the wholesale and retail prices of food products. The CC indicated that the measures concerning the restriction of mark-ups specified in the Draft Law were not appropriate and proportionate in order to achieve the decrease in prices of food products and could even have an adverse effect on consumers should they be applied imprudently and without having discussed all the other alternatives promoting competition. Having assessed the comments submitted by the institutions, the Economic Committee of the Parliament rejected the Draft Law.

11. In November 2011, the CC submitted comments to the Ministry of Finance on the new Draft Law on Insurance. The CC noted that the new provision proposed by the Draft Law whereby it was prohibited to an insurance broker company to offer benefits to the insurer, the beneficiary or the aggrieved third party for concluding an insurance contract could be incompatible with the obligation of administration entities to ensure the freedom of fair competition. Having taken into consideration the observation of the CC, the Ministry of Finance deleted the aforementioned provision.

12. In August 2011, the CC analysed the Draft Law supplementing Article 15 of the Law on the Fundamentals of Free Economic Zones submitted for coordination by the Ministry of Economy. The CC noted that if the draft laws envisaged changing the existing conditions of State aid schemes, these changes should be reported to the EC. The CC drew the attention of the Ministry of Economy to the fact that when granting State aid to the companies operating in free economic zones the *ex post* control of State aid in respect of each company should be ensured.

13. Having examined the Draft Order of the Minister of Agriculture whereby it was intended to amend the regulations on granting State support for removal and disposal of animal by-products not intended for human consumption, the CC indicated to the Ministry of Agriculture that a notification on the amendment of these regulations should be submitted to the EC. The Ministry of Agriculture took into consideration the observations of the CC and notified the aforementioned regulations to the EC.

14. The CC continually provided information to the European Law Department under the Ministry of Justice concerning the necessity to adopt national implementing measures with regard to the legal acts published in the Official Journal of the EU.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities of the CC

15. In 2011, the CC passed 13 Resolutions establishing infringements of the LC, out of which 5 – concerning anti-competitive agreements and 8 - actions of public administration entities.

16. During the reporting year in the area of anti-competitive agreements the CC managed to achieve similar performance results to the ones of 2010 when the focus of attention and the number of staff in charge of this area increased significantly as compared to previous years. For concluding and participating in anti-competitive agreements 54 undertakings were fined in the amount of LTL 16 959 500 (EUR 4 911 811), four new investigations were initiated, on one occasion the CC refused to initiate the investigation and seven investigations were terminated, one of them – after the undertaking had submitted commitments. At the end of 2011, six investigations were still in progress most of them scheduled to be completed in 2012. In relation to the investigations of anti-competitive agreements in 2011 the CC conducted 15 inspections in the premises of the undertakings.

17. Duration of investigation of anti-competitive agreements became shorter, for instance, from the moment of initiation of investigation until the adoption of the final decision of the CC to impose monetary sanctions a period of 8 to 9 months elapses; and in cases when the completion of the investigation is not subject to undertakings' hearing procedure (investigation is terminated), investigations are often completed in 5 to 6 months.

18. Considerable focus was placed on the public procurement sector: a total of 5 investigations concerning alleged cartels among participants in public procurement procedures were completed; in two of these cases infringements of competition law were established and fines were imposed; several investigations shall be continued in 2012. An active cooperation of the CC with the contracting entities and the Public Procurement Office led to an increase of investigations in the public procurement area (for comparison, in 2010 only two decisions were reached). It is expected that further successful cooperation will allow disclosing even more cartel agreements in the future.

19. Several complex large-scale investigations concerning anti-competitive agreements were completed, namely the cartel agreement in the market for the production and trade in orthopaedic technical articles, the case concerning exchange of information between the undertakings engaged in trade of dairy products (following an additional investigation an infringement was established and monetary sanctions were imposed) and the investigation conducted in the pharmaceutical sector which was terminated after the undertakings had submitted commitments to the CC. At the end of the year a cartel of undertakings providing ship agency services was disclosed which was fined nearly LTL 12 million.

2.1.2 Case law

20. In 2011, national courts examined cases related to the undertakings appeals against decisions passed by the CC in respect of the infringements of the LC. In 19 cases national courts upheld the CC decisions, in 3 cases the CC decisions were overruled, and in 4 cases the CC decisions were partly amended.

21. Most important cases of the Supreme Administrative Court of Lithuania (SACL) are provided for below.

- <u>Concerning the decisions of associations to fix the price of goods or services</u>

  On 28 March 2011 and 27 May 2011, the SACL passed its Judgements in the administrative cases respectively concerning the CC Resolution No. 2S-13 of 4 June 2009 and Resolution No. 2S-14 of 11 June 2009 whereby the undertakings providing the services of advertising and media planning and their association KOMAA as well as the undertakings providing event organisation services and their association ROA had been found to have infringed the requirements of Article 5 of the LC by taking the decisions within the associations to apply a fixed fee for the participation of these companies in tenders that had to be paid by the organisers of the respective tender. Taking into consideration the case law of the EU Court of Justice concerning the application of the EU competition rules, by virtue of these Judgements the SACL acknowledged that in cases when an agreement between competitors concerning the prices of goods (services) or any other conditions stipulated in points 1, 2, 3 and 4 of Part 1 of Article 5 of the LC is being examined, it is sufficient to establish the fact of conclusion of an agreement between competitors and an object of the agreement, i.e. a direct or indirect setting (fixation) of the price (final price or a part thereof) of a good (service), in order to conclude an infringement of the provisions of the aforementioned Article by concluding an anti-competitive agreement). The adverse effect on competition needs not be established or assessed. In the Judgements the SACL also voiced its position concerning the liability of undertakings for anti-competitive agreements concluded by

the associations of which the undertakings are members by indicating that an undertaking is liable for the decisions taken within the association because it must evaluate the objectives and activity of the association before becoming a member thereof. Therefore, the undertaking's membership in the association (joining the association) *per se* constitutes consent with the regulations, management and the respective decisions of the association. Hence, even if a member of an association has not expressed its consent with regard to the anti-competitive agreement of the association but also has not unambiguously objected thereto, it is deemed that such a member takes part in such an agreement thereby infringing the requirements of Article 5 of the LC.

- Concerning the establishment of resale prices

On 23 June 2011, the SACL passed the Judgment concerning the CC Resolution No. 2S-2 of 28 January 2010 which concerned the examination of the agreement of companies engaged in the production and trade in audiovisual works to establish (fix) the resale prices of the films recorded in digital versatile discs and videotapes. This Judgement of the SACL is the first judgment whereby the issue of vertical agreements between the supplier and the distributors to fix the resale prices of goods was being examined. Having analysed these agreements, the SACL, taking into consideration the case law of the EU Court of Justice concerning the application of the EU competition rules, concluded that the establishment of resale prices of goods not only hinders the market participants (the distributors of supplier's goods) to freely determine an independent price policy and compete with each other but also objectively restricts the possibility of final consumers or other third parties to acquire the goods at most favourable prices. Besides, according to the SACL, this creates preconditions for extremely dangerous price-fixing agreements between competitors on a horizontal level of retail trade. The SACL also noted that if an agreement provides for "recommended" prices in terms of competition law such an agreement on prices may be deemed as an agreement on fixed or minimal prices provided that all the circumstances nevertheless evidence the supplier's influence and effect on the purchaser and the purchaser in certain ways agrees to apply these "recommended" prices. Besides, taking into consideration the relevant facts, even if the parties do not conclude a formal agreement (sign the contract), the contact and communication by the company may turn into practical cooperation resulting in the application (supporting) of the fixed prices. Whereas in order to prove that there was no agreement in terms of competition law it is important to establish that the distributor's price policy has been drawn up independently and had not been affected by the cooperation with the supplier.

- Concerning the assessment of the right of municipalities to conclude in-house transactions

On 31 March 2011, 5 May 2011 and 15 December 2011, the SACL passed the Judgements having examined the cases on the basis of the complaints of Trakai District Municipality and Vilnius City Municipality concerning the lawfulness of the CC Resolution No. 2S-7 of 19 March 2009, Resolution No. 2S-8 of 1 April 2010 and Resolution No. 2S-15 of 10 May 2010. By these Resolutions the CC had concluded that the decision of Trakai District Municipality whereby it, without any tender or other competitive procedure, authorised the company UAB *Trakų paslaugos* established by the Municipality to carry out the public territory management works, as well as the analogue decisions of the Vilnius City Municipality to authorise UAB *Grinda* established by the Municipality to provide the services of street maintenance, snow cleaning and other mandatory services and to authorise UAB *Vilniaus vystymo kompanija* established by the Municipality to provide building design management and construction management services had infringed the requirements of Article 4 of the LC. In all the cases concerned the municipalities based the lawfulness of their decisions on the fact that the municipalities were entitled to

independently decide on the organisation of provision of services and the transactions concluded between the Municipality and its companies were in conformity with the requirements applicable to in-house transactions formulated in the case law of the EU Court of Justice and provided for in Part 5 of Article 10 of the Law on Public Procurement on the basis of *Teckal* criteria according to which it is not mandatory to organise public tenders for the procurement of goods (services).

In the aforementioned Judgements the SACL, by systematically interpreting the relation of the provisions of the Law on Local Self-Government, the Law on Public Procurement and the provisions on in-house transactions with Article 4 of the LC, arrived at an important conclusion that when municipalities were choosing the way of organising the provision of certain services they had, even if other legal acts, e.g. the Law on Local Self-Government, allowed the municipalities to organise the provision of services by authorising the undertakings established by municipalities to provide these services, in any case to take into consideration the requirements of Article 4 of the LC that prohibit to discriminate against or privilege individual undertakings or groups of undertakings by creating different competitive conditions. On the other hand, in interpreting the right of municipalities to exercise the exception applicable to in-house transactions provided for in the Law on Public Procurement, the SACL emphasised that this exception should be applied strictly in accordance with the criteria formulated in the Law on Public Procurement and the case law of the EU Court of Justice. It is precisely the municipalities which have an obligation to prove that the transaction concluded by them is in conformity with the criteria concerning the control of subject (that it controls the subject concerned as its own service or structural division and is the only participant therein) and the activity of subject (the controlled subject receives at least 90 per cent of sales income from the activity designated to satisfy the needs or to perform the functions of the contracting authority). Unless it is established that the transaction satisfies the requirements for in-house transactions, such a transaction of the municipality may be found to be infringing the requirements of Article 4 of the LC.

- Concerning the performance of assumed commitments

On 25 July 2011, the SACL passed the Judgement whereby it rejected the application of the CC to obligate the Vilnius City Municipality Administration to implement the CC Resolution No. 2S-19 of 20 September 2007 whereby the CC concluded that the Municipality Administration by renting premises for events from UAB *Universali arena* without any tender or other competitive procedure had infringed the requirements of Article 4 of the LC and was obligated to terminate this infringement. This was the first occasion when the CC, pursuant to point 4 of Part 1 of Article 19 of the LC, addressed the Court concerning the performance of the resolution of the CC. The SACL concluded that in the case of non-performance or improper performance of a Resolution of the CC which provides for commitments with a view to eliminating the infringement of Article 4 the same procedure should apply as the one applied in the case of investigation of an alleged infringement of the LC. The CC may bring before the Court an application requesting the Court to obligate the undertaking concerned to implement the Resolution of the CC only after it has conducted an investigation of all the relevant facts and circumstances concerning the non-performance of commitments. Besides, the SACL noted that when addressing the Court the CC should formulate the claim in such a manner that the satisfaction thereof would effectively and efficiently terminate the infringement of competition without creating unsubstantiated preconditions for further disputes or litigation concerning the (non)performance of the resolution of the CC, and therefore the claim of the CC should be sufficiently precise and clear.

- Concerning the discretion of the CC in the course of investigations

  By the Judgement of 14 July 2011 the SACL repeatedly examined the claim of AB *Orlen Lithuania* to compensate for the damage incurred due to the actions of the CC after the CC Resolution No. 2S-16 of 22 December 2005 passed in respect to this company was overruled by the Judgement of the SACL of 8 December 2008 after having acknowledged that the conclusions of the CC concerning the established infringement of the rules of the LC and the TFEU committed by AB *Orlen Lithuania* as a result of abusing its dominant position had been unsubstantiated, and the case was referred back to the CC for an additional investigation.

  The SACL rejected the application of AB *Orlen Lithuania* on the grounds that the CC had not performed any unlawful actions regardless of the fact that the Resolution of the CC was overruled. The SACL emphasised that the CC exercised its discretion when conducting investigations, assessing combined matters of fact and law and carrying out the analysis thereof, e.g. by deciding on the evidence to be collected, distinguishing the significant evidence, deciding on the methods of analysis to be applied and the like. No one has the right to determine in advance how the CC should assess one or another piece of evidence. The unlawfulness of the actions of the CC may be proved having established a sufficiently manifest and serious violation of the limits of discretion that could entail the non-conformity of the actions (inaction) of the CC with the legal rules and legal principles, and also other circumstances depending on the complexity of the situation under investigation. Meanwhile, the fact that the conclusions of assessment presented in a Resolution of the CC fail to convince the court and the Resolution is overruled does not at all prove that the CC has acted unlawfully and may have caused damage to the company by such actions. The SACL noted that a different assessment of the lawfulness of actions of the CC would be incompatible with the purpose and functions of the CC and the protection of the public interest, because the risk that the institution would have to compensate for the damages specified by the company undergoing investigation in cases when a resolution of the CC is overruled due to the conducted assessment of evidence could have a deterrent effect on the performance of control over infringements of the LC.

2.1.3 Description of significant cases, including those with international implications

22. Several especially significant investigations of anti-competitive agreements are presented in greater detail below.

- Cartel agreement in the market for the production and trade in orthopaedic technical articles

  The CC imposed fines in the amount of approximately LTL 3 million on eleven undertakings and their association engaged in production and trade in orthopaedic technical articles for concluding and participating in anti-competitive agreements setting the prices and production quantities of orthopaedic technical articles, as well as for sharing the funds allocated from the Compulsory Health Insurance Fund (CHIF) for compensation of orthopaedic technical articles. In this case the CC concluded an infringement of not only Article 5 of the LC but also of Article 101 of the TFEU.

  The investigation was initiated upon receipt of the information from a company functioning on the market of orthopaedic technical articles. It should be noted that in accordance with the provisions of the LC, a cartel member having informed the CC about the infringement may be exempted from fines. However, in the case in question the CC acknowledged that the company which informed the CC about the infringement did not itself infringe any competition law

requirements since its actions clearly showed that the undertaking was evidently dissociated from taking part in the cartel and was never a member of the cartel.

It was established that the prohibited agreements which were in effect from 2006 to 2010 had caused distortion and restriction of competition in the market of orthopaedic technical articles compensated for to the insured from the CHIF budget. These agreements inflicted damage upon the state budget as the participants thereof by mutual agreement fixed non-competitive prices and this led to an inefficient use of budget funds. The National Health Insurance Fund (NHIF) operating limited resources could serve much fewer patients. The agreements also incurred direct damage to patients, as the companies supplying orthopaedic technical articles acting in concert did not compete when offering goods, and this caused higher prices and poorer quality of goods.

It was also established that the NHIF under the Ministry of Health also infringed the LC requirements since it, being aware of the anti-competitive agreements concluded by the companies, not only failed to take measures to prevent such behaviour but rather encouraged the undertakings to engage in this kind of behaviour. The NHIF was obligated to terminate such actions, and it was proposed to the Ministry of Health to take all the measures to ensure that the procedure for the compensation of orthopaedic articles guarantee competition in the market concerned.

In response to this decision of the CC, in 2011 a Working Group was formed which also included a representative of the CC. The Working Group prepared the necessary drafts of legal acts to ensure that orthopaedic technical articles are purchased in a competitive manner. These legal acts are scheduled for adoption in 2012.

- Investigation in the milk processing market

Two milk processing companies – UAB *Marijampolės pieno konservai* and AB *Rokiškio sūris* by a resolution of the CC were fined nearly LTL 2 million for concluding and participating in a anti-competitive agreement concerning the exchange between the two companies and with third parties of confidential information about the quantities of raw milk purchased and the quantities of individual milk products produced and marketed, thereby infringing the requirements of Article 5 of the LC.

The investigation was conducted in enforcing the judgement of the SACL whereby the CC was obligated to conduct an additional investigation concerning the actions of the companies UAB *Marijampolės pieno konservai* and AB *Rokiškio sūris* functioning in the milk processing market with regard to which the CC had already reached a decision in February 2008. Having conducted the investigation, the CC confirmed the conclusions of its first decision and once again concluded that the exchanges of information effected by milk processing companies via the Lithuanian Dairy Association *Pieno centras* from 2001 – 2007 had infringed the competition law requirements. By exchanging confidential information on the quantities of raw milk purchased and the production and marketing of certain individual milk products, the companies limited the independence of their actions replacing it by concerted actions, and this allowed the participating companies observing and at the same time controlling the behaviour of each other. By virtue of such actions the companies eliminated the uncertainty with regard to the actions of competitors, as all the companies taking part in the exchange of information realised that due to the transparency of their concerted actions neither the companies nor their competitors shall undertake any active measures of mutual competition.

When imposing a fine on AB *Rokiškio sūris*, the CC took into consideration the circumstances established during the additional investigation as well as the fact that in the course of this investigation the company changed its position, i.e. refused to acknowledge the infringement thus eliminating the grounds for applying an attenuating circumstance and leaving the previously imposed fine. The fine upon the latter company was increased up to LTL 1 649 600 (in 2008 a fine in the amount of LTL 824 800 was imposed), and the previous fine of LTL 256 500 imposed upon UAB *Marijampolės pieno konservai* was not increased.

- Public procurement of industrial equipment

  The CC fined UAB *Eksortus* LTL 52 400 and UAB *Specialus montažas – NTP* LTL 334 200 for having coordinated prices of procurement proposals during public tenders of industrial equipment organised by the State Undertaking *Ignalina Nuclear Power Plant* and UAB *Vilniaus energija*.

  The CC established that the employees of UAB *Specialus montažas – NTP* and UAB *Eksortus* responsible for drafting public procurement proposals had cooperated on the matters of drafting tender proposals for procurement of industrial equipment organised by the State Undertaking *Ignalina Nuclear Power Plant* and UAB *Vilniaus energija* by, among other things, coordinating the prices of tender proposals. Consequently, UAB *Eksortus* and UAB *Specialus montažas – NTP* did not compete for submitting better proposals to the organisers of the aforementioned public tender, but rather submitted proposals agreed upon in advance. These actions prevented the organisers of the public tender to benefit from the actual competition at the same time forcing them to procure industrial equipment under the conditions of simulated competition.

- Coordination of prices of public tender proposals

  The CC imposed total LTL 32 000 fines upon five undertakings providing the services of administration of support from EU Structural Funds and other project management and related services for having coordinated the prices of public tender proposals.

  It was established that UAB *Eldra*, UAB *Investicinių projektų konsultantai*, UAB *Investicijų tiltas*, UAB *Verslo logika* and UAB *Zarkompa* from 2008 to 2009 had cooperated when submitting proposals for public tenders. The facts established in the course of the investigation confirmed that these undertakings had put in place a complex scheme of coordinating actions when drafting tender proposals and participating in public tenders, according to which the other parties to the prohibited agreements would submit supporting proposals at higher service prices with a view to show that the public tender was being carried out in a competitive manner and that supposedly all the invited undertakings proposing different prices were taking part in the public tender. All these actions allowed UAB *Verslo logika* to win public tenders. UAB *Verslo logika* was awarded six of the seven investigated tenders (one public tender was awarded to UAB *Investicinių projektų konsultantai*). When submitting tender proposals to various contracting authorities, the aforementioned companies in advance coordinated these proposals, including their prices.

- Price cartel in the market for ship agency services

  The CC imposed total of nearly LTL 12 million fines upon the Lithuanian Shipbrokers and Agents Association and its members - 32 ship agency companies for concluding and participating in an anti-competitive agreement infringing the requirements of Article 5 of the LC and Article 101 of the TFEU. The gravity of the infringement and its long duration were the key factors having determined the amount of fines.

Having *ex officio* conducted an investigation the CC established that 32 companies and their association providing ship agency services in Klaipėda Seaport since 1998 to 2011 (for a period of 13 years) had agreed to apply minimal ship agency tariffs and monitored the compliance thereof. Having agreed on the minimal tariffs for services the companies providing ship agency services avoided the necessity to compete on the services' prices and prevented the owners of ships arriving at Klaipėda Seaport from enjoying advantage of the benefits provided by competition.

- Commitments assumed by undertakings engaged in wholesale trade in pharmaceuticals

The CC reached a decision to terminate the investigation concerning the actions of undertakings engaged in wholesale trade in pharmaceuticals, medical goods and medical devices after the latter had assumed commitments that formed the grounds for elimination of the actions which could have infringed the LC and avoidance of such actions in the future.

The resolution of the CC concerned UAB Berlin Chemie Menarini Baltic, UAB GlaxoSmithKline Lithuania, limited liability company Fresenius Kabi Polska, UAB Viasana, UAB Nutricia Baltics, UAB Tamro, UAB Limedika and UAB Armila.

The assumed commitments obligated these companies to ensure that all agreements for distribution of pharmaceuticals or other similar agreements would not contain any clauses under which wholesalers of pharmaceuticals would have an obligation to coordinate with the pharmaceutical manufacturer their terms and conditions proposed for the public tenders organised by budget institutions. The commitments also obligated the companies to ensure that such type of provisions was not being implemented in practice. This will offer greater possibilities for different wholesalers who are often selling the products of the same pharmaceutical manufacturer to compete by prices.

With a view to promoting competition between the companies engaged in wholesale trade in pharmaceuticals, medical goods and medical devices, the CC, on the basis of the information obtained in the course of the investigation, formulated recommendations to the Ministry of Health whereby the CC proposed to review the pricing of reimbursed pharmaceuticals and to create conditions facilitating parallel import of pharmaceuticals from foreign countries. The CC is of the opinion that having implemented the proposed recommendations the Lithuanian patients would be able to enjoy advantage of the benefits provided by competition.

23. The CC terminated 7 investigations concerning alleged abuse of a dominant position. Some of more significant investigations are described below.

- Investigation concerning distribution of the TV channel "Viasat Sport Baltic" terminated after the company had provided commitments

The CC terminated the investigation concerning compliance with the requirements of Article 9 of the LC of the actions of *Viasat World Limited* and *Viasat AS* once *Viasat World Limited* assumed commitments, and also CC acknowledged that there were no legal grounds to continue the investigation as to compliance with the requirements of Article 102 of the TFEU of the actions of these companies.

In 2009, having received the complaints of *TEO LT*, AB and UAB *Kavamedia*, the CC initiated an investigation concerning the actions of *Viasat World Limited* and *Viasat AS* when distributing the TV channel *Viasat Sport Baltic* for providers of television rebroadcasting. In the course of

investigation it was established that the TV channel *Viasat Sport Baltic* had been distributed to the digital television operators functioning in Lithuania under different terms, namely, the complaining entities *TEO LT,* AB and UAB *Kavamedia* were offered to acquire the TV channel *Viasat Sport Baltic* for distribution only together with the *Viasat* Golden Package, although other providers of multi-channel subscriber digital television services could acquire this channel for distribution separately from the *Viasat* Golden Package. In the opinion of the CC, the application of such different rebroadcasting terms could result in restriction of competition among digital television service providers, constituting an abuse of the dominant position of *Viasat World Limited* and *Viasat AS*.

Having evaluated the possible competition problems outlined in the investigation conclusions, *Viasat World Limited* provided to the CC information and evidence that it had terminated the suspected actions and offered commitments not to apply different *Viasat Sport Baltic* channel distribution terms. The CC found these commitments suitable and sufficient to eliminate the competition law problems established during the investigation.

According to the CC, the commitments offered by *Viasat World Limited* are useful both to digital television operators and their consumers (audiences), because those operators which were unable to acquire this TV channel and offer it to their audiences due to the different terms of distribution of the *Viasat Sport Baltic* TV channel applied by *Viasat World Limited* and *Viasat AS*, will be able to do this after the commitments assumed by the latter undertakings. This should create a possibility for digital television operators to compete more effectively and allow the audience to have access to a wider range of television programmes.

- Investigations concerning alleged abuse of a dominant position in applying predatory prices

The CC conducted two investigations in view of suspicion that the undertakings were abusing their dominant position in applying "predatory" prices. The prices applied by dominant undertakings, especially when they are lower than the prices of competitors, are often viewed by the latter as being too low ("predatory") set in order to push the competitors out of the market. However, as the practice of the CC shows, such prices often have an objective substantiation and cover the costs necessary to create the goods or services, therefore they may not be deemed as "predatory".

- Prices of digital television and high-speed Internet

Having assessed the circumstances established during the investigation, the CC terminated the investigation concerning an alleged abuse of the dominant position by *TEO LT, AB* in applying "predatory" prices.

In response to the complaint of the Lithuanian Cable Television Association (LCTA) received in 2010 the CC initiated an investigation concerning compliance with the requirements of Article 9 of the LC of the actions of *TEO LT, AB*. The LCTA indicated that *TEO LT*, AB, in the attempt to attract new clients, had placed a special offer whereby it was offering to new clients to use the services of digital television GALA and high-speed internet ZEBRA for the entire year without payment, provided that the clients undertook to use these services for a minimum period of three years and pay standard tariffs for services for two years of the three-year period.

It was established in the course of the investigation that the prices of services valid during the special offer of *TEO LT*, AB which were lower than the usual tariffs did cover the costs incurred in relation to provision of these services, and therefore those prices could not be considered to be

too low ("predatory") and such pricing applied by *TEO LT*, AB did not infringe the requirements of the LC.

- Prices of rail transportation of passengers on domestic routes

  The CC by its resolution terminated the investigation concerning an alleged abuse of the dominant position of AB *Lietuvos geležinkeliai* (Lithuanian Railways) by applying low prices of rail transportation of passengers on domestic routes. The investigation was initiated in response to the complaint of UAB *Tolimojo keleivinio transporto kompanija* TOKS indicating that AB *Lietuvos geležinkeliai* was transporting passengers on domestic routes at low prices and as a result of that suffering losses which the company was covering from the profit earned in other fields of activity such as the management of public railway infrastructure, cargo transportation and passenger transportation on international routes. In the opinion of the complainant, AB *Lietuvos geležinkeliai* by such actions was seeking to push out the complainant and other carriers from the market of passenger transportation on several domestic routes.

  The data collected in the course of the investigation showed that the average tariffs of transportation of passengers on domestic routes applied during the investigated period had exceeded the average variable costs of rail transportation of passengers by 25-33 per cent, and therefore there were no grounds to consider that the pricing in question had been predatory and infringing Article 9 of the LC.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under the LC

24. A total of 49 authorisations to implement concentration were issued in 2011, whereas in 2010 – total 33 authorisations. Those concentration cases that involve competing undertakings were examined with particular attention since they could have the greatest negative impact on competition. In 2011 the pharmaceutical sector was especially marked by abundance of concentrations involving competing undertakings. In 2011 the CC received three concentration notifications related to undertakings operating on the markets of wholesale and retail trade in pharmaceuticals and other goods. In two instances (when *Central European Pharmaceutical Distribution N.V.* acquired 100 per cent of shares of UAB *Nacionalinė farmacijos grupė* and when UAB *Saulėgrąžų vaistinė* (Sunflower Pharmacy) acquired 67 per cent of shares of UAB *Thymus vaistinė*) the CC issued authorisations to implement concentration. However, the authorisation to implement concentration for UAB *Gintarinė vaistinė (Amber Pharmacy)* by acquiring 100 per cent of shares of UAB *Saulėgrąžų vaistinė* (Sunflower Pharmacy) and 100 per cent of shares of UAB *Thymus vaistinė* was issued only after the companies participating in the concentration submitted commitments eliminating the possible adverse effects of concentration.

Dynamics of Concentration Cases

Year	2007	2008	2009	2010	2011
New notifications received	78	54	42	40	46
Total authorisations granted:	74	52	47	33	49
Of which to undertakings registered in foreign states	14	13	14	11	12
Authorisations subject to conditions and obligations	2	4	1	0	1
Authorisations to perform individual actions of concentration	5	2	3	4	7
Refusals to issue an authorisation	1	0	0	0	0

25. In 2011 four investigations were initiated in view of suspicion that the undertakings had implemented concentrations without having notified the CC and without having obtained the authorisations to implement such concentrations.

2.2.2 Summary of significant cases

26. It is worth mentioning the concentration implemented by UAB *Gintarinė vaistinė* (*Amber Pharmacy*) which was authorised by the CC only after UAB *Gintarinė vaistinė* had undertaken to sell or otherwise transfer the pharmacies in five municipalities. By this concentration UAB *Gintarinė vaistinė* aimed at developing the company by acquiring its competitors UAB *Saulėgrąžų vaistinė* and UAB *Thymus vaistinė*. All of these companies owned large pharmacy networks functioning in a number of municipalities of Lithuania, therefore, when assessing the impact of this transaction on competition, considerable focus was placed on those municipalities in which both a pharmacy of UAB *Gintarinė vaistinė* and the pharmacies owned by the acquired companies were functioning. It was established in the course of the investigation that as a resulf of this company development UAB *Gintarinė vaistinė* would acquire significant shares of the market in five municipalities: Jonava District, Varėna District, Kelmė District, Telšiai District and Biržai District. The concentration in question could cause the following adverse effects in the aforementioned municipalities: the number of competitors of UAB *Gintarinė vaistinė* would decrease and the possibilities for small market participants to enter or develop these markets could be restricted. Besides, the share of the market held in the aforementioned municipalities by UAB *Gintarinė vaistinė* together with its closest competitors UAB *Eurovaistinė* and UAB *Nemuno vaistinė* all of which have an advantage over a number of other market participants because all the above companies are engaged in both wholesale and retail trade in pharmaceutical goods would reach 79 to 94 per cent. In order to avoid possible adverse effects on competition the CC formulated commitments to be assumed by UAB *Gintarinė vaistinė* – renounce from specific pharmacies in the territories of the municipalities of Jonava, Varėna, Kelmė, Telšiai ir Biržai districts. The renunciation of pharmacies should prevent UAB *Gintarinė vaistinė* from acquiring a significant market share in the aforementioned municipalities as a result of concentration, it should also reduce the possible adverse effect on competition and should allow avoiding the restriction of market entry and development possibilities for small market participants. Once UAB *Gintarinė vaistinė* renounces the pharmacies in the territory of five municipalities and transfers the pharmacies to an appropriate purchaser, the consumers in these municipalities will have better possibilities of choosing different pharmacies and the increased number of competitors should have a positive effect on competition in those municipalities. The CC thus ensured that the merger of competitors does not lead to a dominant position or significant restriction of competition in the market.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1 Concerning restrictive actions of public administration entities

27. In assessing the compliance of actions of public administration entities with the provisions of Article 4 of the LC related to the duty of public administration entities to protect the freedom of fair competition, in 2011 the CC established total 8 infringements, initiated 7 new investigations, on 12 occasions refused to initiate the investigation and 5 investigations were terminated.

28. When conducting investigations, the CC faced legal regulation problems mostly associated with the restriction of competition in the waste management sector. For instance, the Law on Waste Management currently in force allows the municipalities to authorise a company controlled by the municipality to provide waste collection and transportation services but it fails to indicate specific circumstances under which the municipalities may enforce this right. When assessing whether this does not constitute an infringement of Article 4 of the LC it is not absolutely clear whether the municipalities may

rely upon such provisions of the Law on Waste Management and therefore the provisions of the LC would not be applicable, or whether they should after all assess the respective situations in terms of interrelation of both laws. At the end of 2011, the SACL brought before the Constitutional Court of Lithuania an application to examine the compliance of the provision of the Law on Waste Management entitling the municipality to authorise a company established by the municipality to provide waste management services with Part 1 of Article 29 and Parts 1, 3 and 4 of Article 46 of the Constitution of the Republic of Lithuania.

29. Some of more important cases are provided below.

- Providing mandatory services in Vilnius

  The CC found that the relevant provisions of the Decision of Vilnius City Municipality authorising UAB *Avarija* to provide mandatory services and the contract concluded between the Municipality and UAB *Avarija* on the basis of the Decision constituted an infringement of the requirements of Article 4 of the LC. The Vilnius City Municipality was obligated to repeal the relevant provisions of the Decision, to terminate the aforementioned contract or to amend it as to ensure its compliance with the LC. Hence, both UAB *Avarija* and other companies providing the services of central dispatcher office and emergency service and the services of elimination of breakdowns in internal engineering systems of buildings in the territory of Vilnius city will have to operate in the respective markets under equal terms enjoying advantage of the benefits provided by competition.

- Passenger transportation on a domestic route in Nemenčinė direction

  The CC concluded that the Decision of the Vilnius District Municipality Council and the contract concluded on the basis thereof, whereby the company controlled by the Municipality *Vilniaus rajono autobusų parkas* was authorised to provide passenger transportation services on a domestic route in Nemenčinė direction without any competitive procedure, had infringed Article 4 of the LC. It should be noted that the Municipality was obligated to repeal or to amend the Decision and the contract concluded on the basis thereof as to ensure their compliance with the requirements of the LC. Domestic transportation services in Nemenčinė direction should be provided to passengers not by a specific company selected by the Municipality but rather only by a company having submitted the best tender proposal and been awarded the public tender.

- Calculation of base prices of pharmaceuticals

  The CC investigated whether the Outline of Procedure for Calculation of Base Prices of the Budget of the Mandatory Health Insurance Fund approved by the Government is in compliance with the requirements of Article 4 of the LC. Although no infringement was established by the CC, it was proposed to the Government, when amending the relevant legal acts, to evaluate whether and how pharmaceutical manufacturers could be encouraged to compete. When submitting its proposals the CC emphasised that a clear, consistent and substantiated regulation would allow expecting that pharmaceutical manufacturers incur lower activity costs and this could affect the final price of pharmaceuticals offered to consumers.

3.2 Concerning unfair commercial activity

30. The CC not only safeguards efficient competition from being restricted by actions of undertakings or public administration entities but it also monitors that the undertakings refrain from engaging in unfair commercial practices. The CC investigates the cases of misleading and prohibited

comparative advertising, unfair competition cases and unfair actions of retail trade companies having significant market power.

31. In 2011 the CC was addressed on 354 occasions (in 2010 – 336) concerning alleged unfair actions of companies. The complainants were most often complaining regarding misleading advertising and the alleged infringements of Article 16 of the LC prohibiting unfair competition. It could be concluded that there is an intensive competition between companies and the consumers more and more actively protect their rights. In exercising the assigned functions, the CC gave consultations to companies on relevant matters (in most cases the CC was requested to provide information on misleading advertising and prohibited comparative advertising, especially concerning the use of trademarks). The CC also imposed preventive measures in cases of alleged infringements, i.e. it issued warnings to companies that their actions in certain cases were allegedly infringing the provisions of Articles 5 and 6 of the Law on Advertising (LA) and Article 16 of the LC and recommended to cease such actions. In eleven instances infringements were established and sanctions were imposed: in one instance a warning was issued and in ten instances fines were imposed, in two instances of which the providers of advertising were also obligated to end the use of misleading advertising, and in one instance to denounce the advertising statements.

32. Certain problems have been identified. Firstly, bearing in mind the very limited available resources, the CC receives a great number of complaints concerning the alleged infringements of the LA and therefore it is necessary to establish a more effective complaint examination procedure. With a view to solving this problem the CC adopted Explanatory Notes concerning cases involving minor infringements of the LA that enable to more promptly examine complaints concerning minor facts and also allows the consumers and the companies to have a better understanding of the alleged infringements which the CC considers to be essential and which are viewed by the CC as minor. The amendments to the LA proposed by the CC should also ensure better possibilities for protection of consumer rights.

33. The examples of the conducted investigations concerning misleading and prohibited comparative advertising are presented below.

- <u>Misleading advertising of the shopping mall BIG Vilnius</u>

  The CC imposed a fine of LTL 18 600 upon UAB *Entum* for the use of misleading advertising of the shopping mall *BIG Vilnius*.

  In the course of the investigation the CC established that it was advertised on television, on the radio and on the Internet that during the promotional offers the prices of all goods were being reduced from 21 to 70 per cent, however not all the shops in the shopping mall took part in the promotional campaign, and not all goods received discounts.

  The provider of advertising UAB *Entum* claimed that it had taken measures to inform the consumers about the promotional offer and to avoid the possible misleading by making a reference to the website during the advertising disseminated on the radio and television, and on the website the consumers could find all the information about the promotional offer. UAB *Entum* also specified that a consumer who had not checked the terms of the promotional offer on the designated website was able to do that directly having arrived at the shopping mall. According to the provider of advertising, the salesmen could indicate whether a certain good was subject to discounts of the promotional offer, and posters were displayed in the shopping mall *BIG Vilnius* announcing that a specific shop was taking part in the promotional offer and listing the goods that were subject to discounts. Additional information was also available from the information centre of the shopping mall *BIG Vilnius*.

Having conducted the investigation the CC found the advertising disseminated on the television and the radio to be misleading because not all the goods were subject to discounts. The provider of advertising itself specified that only 60 per cent of the companies that took part in the promotional offer had applied discounts on all goods or services.

Besides, the CC noted that the advertising disseminated on the television and the radio had not been comprehensive. The advertising could lead the consumers to expect to acquire all the goods and services with advertised discounts in all the places of trade and provision of services located in the shopping mall, although in reality the consumers could only benefit from the promotional offer in those places of trade and provision of services that took part in the promotional offer.

The CC also concluded that the fact that the provider of advertising had placed comprehensive advertising on the Internet and the posters displayed in the shopping mall did not refute the fact that the misleading advertising disseminated on television and the radio could have affected the economic behaviour of consumers.

- Misleading advertisements by UAB IMK LT

The CC imposed a fine of LTL 20 000 upon UAB *IMK LT* for the use of prohibited comparative advertising that was erroneously and not objectively comparing the prices of goods and services provided by UAB *IMK LT* and its competitors. Advertisements were disseminated both on the Internet and by electronic mail.

The CC established that the prices of goods sold by UAB *IMK LT* that were valid at the moment of the use of advertising were being compared with the no longer relevant and outdated prices of goods of competitive companies. Therefore the CC concluded that these advertisements failed to satisfy the criterion of objective comparison required in the case of comparative advertising. Besides, the CC also established that one comparative advertisement gave wrong prices of goods sold by the competitors of UAB *IMK LT* and also specified wrongly the percentage of the difference between the prices of UAB *IMK LT* and its competitors. Therefore the CC found this advertisement to constitute a prohibited comparative advertisement also because it was misleading consumers.

When comparing the services provided by UAB *IMK LT* with the services provided to consumers by competitive companies it was indicated in the advertisement that UAB *IMK LT* delivered the goods to consumers without payment. However, in the course of the investigation the CC established that the service of free delivery of goods was not being provided to consumers in all cases. In cases when the purchase amount did not exceed LTL 200 the consumer had to pay an additional delivery fee of LTL 10. The CC concluded that this advertisement constituted a prohibited comparative advertisement since it failed to satisfy the necessary requirement of comparative advertising not to mislead.

3.3 Coordination of State aid

34. Acting in accordance with the EU State aid rules and performing its functions of the coordinating authority in State aid-related issues the CC closely cooperated on state aid issues both with the Lithuanian institutions and the European Commission (EC). During the reporting year 7 notifications on State aid and 8 Forms of summary information on State aid granted according to the exemption regulation, as well as the annual reports on State aid granted by the Lithuanian institutions were submitted to the EC (see Annexes 5, 6 and 7). In addition, the responses drafted by the relevant institutions to 6 surveys of the EC were also submitted to the EC.

35. The CC together with other interested institutions comprehensively examined and submitted comments and proposals on certain draft legal acts of the EC: for instance, on the package of measures setting out the application of the EU state aid rules to the financing of services of general economic interest adopted in 2011.

36. In addition, the CC, as the coordinating authority in State aid related issues, submitted to the EC the information drafted by the responsible Lithuanian institutions concerning the complaints received and being examined by the EC (concerning a public service related to the electricity tax, concerning state aid granted to sectoral centres of practical training, and concerning real estate tax).

37. In 2011 the CC had been further supplementing the State Aid Register; from the outset of the Register operation (1 October 2005) to 31 December 2011 entries were made on 94 442 *de minimis* aid cases (including *de minimis* aid in agriculture and fisheries sectors) and on 272 state aid schemes and individual cases.

3.4 Coordination of prices and rates

38. In 2011 the CC, within the scope of its competence, had been controlling the compliance with the Law on Prices and the relevant secondary legal acts – Resolutions of the Government (3 February 1994, No. 77; 28 May 2002, No. 756) in the area of pricing, placing a special focus on the establishment of prices and rates of monopoly goods and services provided by State undertakings established by Ministries and the Government of the Republic of Lithuania and public institutions assigned to them. In 2011 the CC received applications concerning coordination of monopoly prices and rates from the Ministries of Environment, Energy, Justice and Internal Affairs, as well as from the Lithuanian Department of Statistics and the National Control Commission for Prices and Energy. The CC approved total of 11 draft prices and rates.

3.5 Monitoring of activity of retailers having significant market power

39. Acting in accordance with the Law on the Prohibition of Unfair Practices of Retailers (LPUPR) the CC submitted proposals concerning the improvement of the LPUPR in the Monitoring Report of 1 March 2011. The submitted proposals aimed at specifying and supplementing the list of the prohibited unfair actions provided for in the LPUPR. It was proposed to include a prohibition for major retail networks to associate the prices of the goods supplied by the supplier with the prices applied by the supplier in respect of the third parties. The intention of this proposal was to allow avoiding a situation when a supplier would be forced to establish the same selling prices with all retail networks. It was also proposed to supplement the list of prohibited actions with a prohibition to apply fixed commercial discounts that were not linked to the sale of goods, logistics (distribution and delivery of goods) or promotion of sales. The aforementioned amendments should ensure that the prohibitions provided for in the LPUPR could not be avoided by performing actions that formally did not infringe the LPUPR but nevertheless constituted unfair actions. In view of the proposals concerning the improvement of the LPUPR formulated by the CC, in autumn of 2011 one member of the Parliament of the Republic of Lithuania submitted a Draft Law amending Article 3 of the LPUPR.

40. It should be noted that in 2011 the CC didn‘t receive any substantiated complaints concerning an alleged infringement of the provisions of the LPUPR. With a view to obtaining information on the existing situation in relations between the suppliers and the major retail networks, the CC, in cooperation with the Lithuanian Confederation of Industrialists that unites over 2700 companies, distributed an anonymous questionnaire to the members of this Confederation. In addition to this anonymous questionnaire, the CC also performed a direct survey of suppliers and major retail networks in the course of which questions to 273 suppliers and 4 major retail networks were presented. These surveys were a tool for gathering information on the changes in the situation of suppliers (whether following the entry into force of the LPUPR their situation had improved, worsened or remained unchanged), the possible infringements and the like.

41. However, the results of the surveys conducted by the CC showed that the suppliers were reluctant to provide information on the changes in their situation. Only 6 undertakings replied to the anonymous questionnaire, and only 46 out of 273 suppliers gave responses to the direct survey of suppliers concerning the changes in their situation. Since only a slight number of suppliers had given responses to the questions concerning the changes in their situation following the entry into force of the LPUPR, it was impossible to draw any substantiated conclusions concerning the impact of the LPUPR.

42. The CC had also been analysing contracts concluded between the suppliers and major retail networks. On the basis of the gathered information in February 2012 the CC initiated an investigation concerning the actions of one of the major retail networks that had allegedly infringed the provisions of the LPUPR.

43. When formulating its conclusions in the Monitoring Report of 2012 the CC noted that although during the monitoring period, i.e. in 2011, no actions prohibited under the LPUPR were established in contractual relations between the suppliers and major retail networks, it nevertheless may not be concluded that the undertakings completely renounced from such actions.

44. The CC also emphasised that the conclusions of the CC were based on very limited data that does not necessarily reflect the actual situation between the suppliers and major retail networks.

45. Finally, the CC indicated in the Monitoring Report that, taking into consideration the peculiarities of contractual relations and the passiveness of suppliers in providing information on the impact of the LPUPR, the possibilities of the CC to carry out monitoring of the LPUPR were especially limited. Besides, the monitoring causes administrative burden both for undertakings and the CC. Therefore, the CC believes that the necessity of the yearly monitoring report submitted by the CC should be discussed.

3.6 Other activity

46. As of October 2011 the CC was exercising the supervision functions that were newly assigned to the CC under the amendments to the Railway Transport Code, i.e. monitoring competition in the railway transport sector and regulating the relations between the manager of public railway infrastructure and the railway companies (carriers).

4. Resources of the competition authorities

4.1 Recourses overall (current number and change over previous year):

4.1.1 Annual budget (in your currency and USD)

- LTL 2,99 million (USD 1,25 or EUR 0,87 million at the currency rate of early 2011) in 2010,
- LTL 3,49 million (USD 1,35 or EUR 1,01 million at the currency rate of early 2012) in 2011.

4.1.2 Number of employees (person-years)

- Economists: 18
- Lawyers: 25
- Other professionals: 3
- Support staff: 16
- All staff combined: 62

4.2 Human resources (person-year) applied to:

- Enforcement against anticompetitive practices: 27
- Merger review and enforcement: 8
- Advocacy efforts: 9

4.3 Period covered by the above information

- 1 January 2011 to 31 December 2011

5. Summaries of or references to new reports and studies on competition policy issues

47. More information can be found on the CC website www.konkuren.lt